

**FILED**

UNITED STATES DISTRICT COURT  
SANTO DOMINGO, NEW MEXICO

JAN 11 1999

CLERK'S COPY

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIO GARCIA-OVEIDO,

Defendant.

*R. J. Thomas*  
CLERK

No. CIV-98-0878 BB/JHG  
CR-96-513 BB

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court to consider Defendant's Motion to Run Federal Time with State Time filed July 16, 1998. Defendant was sentenced in this Court on April 24, 1997, and subsequently received a sentence in state court. He asks that his federal sentence be made to run concurrent with the state sentence. The motion will be denied.

The first bar to Defendant's motion is that, even at the time of sentencing, his sentence could not have been imposed to run concurrent with a subsequent state sentence. *United States v. Ballard*, 6 F.3d 1502, 1510 (11th Cir. 1993) ("consecutive sentence imposed by the federal court ... preserves [sentencing] prerogative for both sovereigns, while a prospective concurrent sentence would not.") (cited in *United States v. Williams*, 46 F.3d 57, 59 (10th Cir. 1995)); *United States v. Neely*, 38 F.3d 458, 461 (9th Cir. 1994) ("a federal court does not acquire discretion to impose a concurrent sentence until the defendant has been sentenced by another court."); *see also* 18 U.S.C. § 3584. And second, "the court has no authority to modify [Defendant's] sentence retroactively to make it run concurrent to the state sentence he is currently serving." *Traynor v. Federal Bureau of Prisons*, 131 F.3d 152 (Table, text in Westlaw), 1997

3

WL 748659, at \*\*2 (10th Cir. 1997) (citing 18 U.S.C. §§ 3585; 3582(c); 3584); *and see United States v. Smartt*, 129 F.3d 539, 541 (10th Cir. 1997); *United States v. Mendoza*, 118 F.3d 707, 709 (10th Cir.), *cert. denied*, --- U.S. ---, 118 S.Ct. 393 (1997); *United States v. Blackwell*, 81 F.3d 945, 947-49 (10th Cir. 1996) (sentence can only be modified pursuant to statutory authority). The motion will be denied.

IT IS THEREFORE ORDERED that Defendant's Motion to Run Federal Time with State Time filed July 16, 1998 is hereby DENIED, and this civil proceeding is DISMISSED.

  
UNITED STATES DISTRICT JUDGE